

# Exhibit 325

*United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.*  
*v. Dey, Inc., et al.*, Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support  
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR  
LEON COUNTY, FLORIDA

2 THE STATE OF FLORIDA )

3 ex rel. )

4 )  
5 VEN-A-CARE OF THE )

6 FLORIDA KEYS, INC., )

7 a Florida Corporation, by )

8 and through its principal )

9 officers and directors, )

10 ZACHARY T. BENTLEY and )

11 T. MARK JONES, )

12 Plaintiffs, )

13 VS. )

CIVIL ACTION NO.

98-3032A

14 BOEHRINGER INGELHEIM )

15 CORPORATION; DEY, INC.; DEY, )

16 L.P.; EMD PHARMACEUTICALS, )

17 INC.; LIPHA, S.A.; MERCK, )

18 KGaA; MERCK-LIPHA, S.A.; )

19 SCHERING CORPORATION; )

20 SCHERING-PLOUGH CORPORATION; )

21 ROXANE LABORATORIES, INC.; )

22 and WARRICK PHARMACEUTICALS )

23 CORPORATION, )

24 Defendants. )

25 \*--\*--\*--\*--\*

VIDEOTAPED DEPOSITION OF HELEN SELENATI

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On the 5th day of May, 2005, between the hours of 9:16 a.m. and 5:38 p.m., at the Marriott San Mateo San Francisco Airport, 1770 South Amphlett Boulevard, San Mateo, California, before me, CYNTHIA VOHLKEN, a Certified Shorthand Reporter for the State of Texas, appeared HELEN SELENATI, who, being by me first duly sworn, gave an oral deposition at the instance of the Plaintiffs in said cause, pursuant to the Florida Rules of Civil Procedure.

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FOR THE DEFENDANT(S) DEY, INC., DEY, L.P., EMD PHARMACEUTICALS, INC., LIPHA S.A., MERCK KGaA and MERCK-LIPHA S.A.:

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Mr. John M. Kling  
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 Mr. Richard Rienstra, Videographer

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1 MR. ESCOBAR: Objection to the form.

2 A. Yes, it did.

3 Q. (BY MR. AZORSKY) What -- what happened as a  
4 result of the memo being sent?

5 A. Well, the whole --

6 MR. ESCOBAR: Objection to the form.

7 Sorry.

8 Q. (BY MR. AZORSKY) If anything.

9 A. The whole commotion around the business that  
10 we were using (sic) to Warrick died down and there was  
11 no more complaints coming out of the sales force and  
12 it seemed like the situation had been rectified.

13 Q. Is that your signature appearing next to your  
14 name on the first page of Exhibit 46?

15 A. Yes, it is.

16 Q. Was that your common practice to write your  
17 name --

18 A. Yes, it was.

19 Q. -- next to your typed name on a memorandum  
20 that was circulated?

21 A. Well, it meant that I had signed off on it.

22 Q. Are -- are you aware that in the Texas  
23 litigation Dey took the position that you're a rogue  
24 employee, that you created this memorandum and planted  
25 it in the file in an effort to spite or get back at

1 files. If I really wanted to do this on purpose, I

2 would have definitely been more purposeful in the --  
3 in the -- in taking action.

4 And apart from that, after Mr. Mozak  
5 left me the voice mail message, I waited another eight  
6 months for the Texas attorney general's office to  
7 contact me, whereas I knew that that was incriminating  
8 evidence right there. If I was wanting to get back at  
9 him for any reason I could have had many, many  
10 opportunities to report him to the authorities and I  
11 chose not to.

12 Q. When you stated earlier in reference to  
13 Exhibit 46 that -- when you referred to Warrick's  
14 elevated WAC prices, did you understand that Warrick  
15 had reported a WAC price that was higher than what  
16 Warrick was selling its -- its drugs for in the  
17 marketplace?

18 MR. McDONALD: Object to the form.

19 MR. ESCOBAR: Objection to the form.

20 A. I had no idea what Warrick was selling their  
21 product for in the marketplace, but I do know that  
22 their WAC price was above the Dey's WAC price. And by  
23 assumption one would assume that their selling price  
24 was lower because their spread was bigger.

25 MR. McDONALD: Objection, nonresponsive.

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1 Mr. Mozak for personal reasons?

2 MR. ESCOBAR: Objection to the form of  
3 the question. Mischaracterizes the testimony and it's  
4 highly improper and you're misleading the witness.

5 A. I'm aware that in the Texas investigation Dey  
6 Labs' position was that I was a rogue employee and  
7 that I planted this memo deliberately and hid it in  
8 the files in order to somehow take revenge on  
9 Mr. Mozak.

10 Q. (BY MR. AZORSKY) You're aware that they took  
11 that position?

12 A. I'm aware that --

13 MR. ESCOBAR: Objection to the form.

14 A. I'm aware that they took that position.

15 Q. (BY MR. AZORSKY) Is there any truth or  
16 legitimacy to that position?

17 A. Well, of course not. I mean, this memo was  
18 written in May of '95 and it took -- if I was wanting  
19 to get back at Mr. Mozak, I'm -- I'm a fairly  
20 intelligent and action-oriented person. I would not  
21 have waited eight years for -- for an investigation to  
22 happen and for somebody to be going through the files  
23 to find this memo in God knows what file. I mean,  
24 this file -- there was, what, four years -- three or  
25 four years in which somebody could have cleaned up my

1 Q. (BY MR. AZORSKY) Their selling price was  
2 lower than what?

3 MR. ESCOBAR: Objection to the form.

4 A. Their selling price was lower than their WAC  
5 price because it created a broader spread for their  
6 clients.

7 Q. (BY MR. AZORSKY) Okay. When did you leave  
8 the employ of Dey?

9 A. I think it was August '95.

10 Q. Did you have an occasion after -- at some  
11 time after you left the employ of Dey to have one or  
12 more conversations with Mr. Mozak about your May 30,  
13 1995 memo marked as Exhibit 46?

14 A. Yes, I did.

15 Q. When was the first time you had a  
16 conversation with Mr. Mozak about that?

17 A. I think it was December '99 when we met for  
18 the first time in I think about two and a half years  
19 and that was the first time that him and I had a  
20 discussion about the memo.

21 Q. I'm sorry, that was when?

22 A. The first time him and I had a discussion  
23 about the discovery of this memo.

24 Q. Was when?

25 A. December '99.



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1 contracts worked with, but in the marketing department  
2 I never saw a list or a price that referred -- was  
3 referred to as an AMP, a price net of all discounts.  
4 Never saw that.

5 Q. Were you aware that with some of the changes  
6 in the legislation drug manufacturers, both brand  
7 manufacturers and generic manufacturers, had to enter  
8 into rebate arrangements where they would pay rebates  
9 to the states in order to participate in the Medicaid  
10 program?

11 A. I believe that was part of what the contracts  
12 department did, yes.

13 Q. And during the time that you were at Dey were  
14 you aware that there was a rebate program where Dey  
15 paid rebates to states?

16 A. Yes, I had heard of that.

17 Q. And did you have any knowledge as to how  
18 those rebates were calculated?

19 A. I have no idea.

20 Q. Were you aware that Dey reported AMP prices  
21 to the federal government?

22 A. No, I was not.

23 Q. And nobody from the Florida attorney  
24 general's office or the Texas attorney general's  
25 office or any other people that you've met ever told

1 force.

2 Q. Okay. Now, when you joined Dey, did you at  
3 some point become aware of the concept of another  
4 price, AWP?

5 A. Yes.

6 Q. And AWP, that term existed before you joined  
7 Dey; is that correct?

8 A. That's correct.

9 Q. And was it your understanding that companies  
10 had to have an -- an AWP price for their products in  
11 order to be able to participate in the market?

12 A. Well, I became aware of that over time. It  
13 wasn't something that I was aware of immediately when  
14 I joined.

15 Q. Well, at some point after you joined Dey you  
16 became aware that drug companies had to have an AWP  
17 price if they wanted to compete, right?

18 A. That's right. If they wanted to be published  
19 in the databases.

20 Q. And if you didn't have an AWP price, could  
21 you actually effectively participate in the various  
22 programs that existed on drugs?

23 A. I don't know.

24 Q. All right. Now, the AWP -- you testified  
25 yesterday about AWP. Where did your learning as to

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1 you about Dey's AMP price?

2 A. No.

3 Q. So I take it that you were not -- as part of  
4 your job you were not necessarily familiar with all  
5 the price levels that Dey reported to governments or  
6 other entities; is that right?

7 MR. AZORSKY: Objection, form.

8 MR. THOMAS: Object to the form.

9 Q. (BY MR. ESCOBAR) You can answer the  
10 question.

11 A. I'm thinking. Can you restate that again?

12 Q. (BY MR. ESCOBAR) Sure. You've testified, I  
13 think, that you were not familiar with Dey's AMP. So  
14 my question to you is would you agree that as part of  
15 your job you weren't familiar with all the prices that  
16 Dey had or that Dey had to publish or give to the  
17 government or other people?

18 A. I was only familiar with the prices that were  
19 published on the price sheets. I was not familiar  
20 with what went on in the contracts department in terms  
21 of prices that were reported to the government, no.

22 Q. And the price sheets are the ones you  
23 mentioned yesterday, which were the different colored  
24 price lists; is that right?

25 A. That's correct. That went out to the sales

1 what AWP was, where did that come from? Did you have  
2 any before you joined Dey?

3 A. No, I had none whatsoever.

4 Q. Now, as part of the process of launching  
5 Albuterol, you were involved in actually putting  
6 together a plan, a launch plan, correct?

7 A. Can you say that again?

8 Q. You were involved in putting together and  
9 organizing a launch plan for coordinating the various  
10 activities of the company in order to launch the  
11 Albuterol product, correct?

12 A. That's correct.

13 (Exhibit 51 marked)

14 Q. (BY MR. ESCOBAR) I'm showing you what has  
15 been marked as Exhibit 51. And this is -- the first  
16 page is entitled "Dey Laboratories, Inc. New Product  
17 Marketing Plan Albuterol Sulfate Inhalation Solution  
18 0.083% 3 milliliters." "Prepared by: Helen A.  
19 Burnham." "Date: February, 1992." Can you just take  
20 a look at the document and tell the jury what this is?

21 A. (Witness reviewing document). Okay. I  
22 reviewed it.

23 Q. And this was a -- Exhibit 51 is a marketing  
24 plan for the launch of Albuterol that you put  
25 together, correct?

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1 nobody really -- nobody at Dey knew that?

2 MR. AZORSKY: Objection to form.

3 A. I have no idea whether nobody knew that. I  
4 was instructed by Bob Mozak to make that phone call.

5 Q. (BY MR. ESCOBAR) Okay. And when Mr. Mozak  
6 instructed you on that, he didn't tell you anything  
7 about this 10 percent, did he?

8 A. No, he didn't.

9 Q. Okay. So the first time you heard about the  
10 10 percent was in your conversation with  
11 Mr. Edelstein; is that correct?

12 A. That's correct.

13 Q. Now, what would this 10 percent be applied  
14 to?

15 A. The AWP of the existing branded product.

16 Q. And did you actually do that?

17 MR. AZORSKY: Objection to form.

18 A. Did I do what?

19 Q. (BY MR. ESCOBAR) In other words, did you go  
20 back after you spoke to Mr. Edelstein and obtain an  
21 AWP for a branded product, multiply that by 10 percent  
22 and come up with an AWP for Dey's Albuterol?

23 A. I don't think I did that. I reported back to  
24 Mr. Mozak that the AWP needed to be set at 10 percent  
25 below the branded product's price in order for us to

1 A. That's correct.

2 Q. -- correct? Yes?

3 A. That's correct.

4 Q. And at the time that the AWP was set, it was  
5 your understanding that AWP was used in connection  
6 with reimbursement by government agencies; is that  
7 right?

8 A. That's correct.

9 Q. And was it your general understanding that  
10 the specifics differed, but some states used AWP with  
11 a formula to come up with a reimbursement for  
12 pharmaceutical products?

13 A. That's correct.

14 Q. Now, at the moment that the Albuterol from  
15 Dey was first put into the market and it was first  
16 reimbursed by a Medicaid agency to any provider, the  
17 reimbursement by that agency was at an amount lower  
18 than the reimbursement had been for the brand,  
19 correct?

20 MR. AZORSKY: Objection to form.

21 A. I have no idea what -- what the reimbursement  
22 was or what -- what was -- the first reimbursement was  
23 all about.

24 Q. (BY MR. ESCOBAR) Well, let me see if I  
25 understand this then. You -- at -- you launched the

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1 be considered a generic product.

2 Q. And did you say anything else to Mr. Mozak  
3 about that?

4 A. I don't remember.

5 Q. You don't remember exactly what you said  
6 then?

7 A. We are talking about 13 years ago. I don't  
8 remember everything I said in conversations. I  
9 remember the gist of the conversation.

10 Q. Okay. Now, so you've given us your best  
11 recollection on that conversation, right?

12 A. That's right.

13 Q. By the way, that's true generally that --  
14 you -- you testified about a lot of conversations  
15 yesterday. That's true about all the conversations,  
16 that you don't remember all of them verbatim, do you?

17 MR. AZORSKY: Objection to form.

18 A. Of course not.

19 Q. (BY MR. ESCOBAR) Sorry?

20 A. Of course not.

21 Q. Okay. Now, was it your understanding that at  
22 some point Dey set an AWP for its Albuterol?

23 A. That was my understanding, yes.

24 Q. And the Dey AWP was set at a level lower than  
25 the brand --

1 Albuterol, right?

2 A. That's right.

3 Q. It was sold to people in the market, right?

4 A. That's right.

5 Q. Patients got it and used it, right?

6 A. Correct.

7 Q. And it's your understanding that at some  
8 point it was reimbursed -- providers were reimbursed  
9 for the Albuterol they got from Dey, right?

10 A. That's right.

11 Q. And the Dey AWP you knew was lower than the  
12 brand that existed, right?

13 A. That's right.

14 Q. So any entity that reimbursed on the basis of  
15 AWP would automatically be paying less on  
16 reimbursement for the Dey product than the existing  
17 brand, correct?

18 A. That's correct.

19 Q. Okay. So once Dey came into the market and  
20 launched its Albuterol, every government agency that  
21 reimbursed on AWP was saving money because of the  
22 introduction of Dey, right?

23 MR. AZORSKY: Objection to form.

24 MS. MILLER: Form.

25 A. They were paying less, yes.

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1 both the government and the provider, in terms of less  
2 expenses for the government and more profit for the  
3 provider.

4 Q. (BY MR. ESCOBAR) So would you agree with me  
5 then that what that meant was that the generic product  
6 became a more attractive product for providers than  
7 the brand product because they can make more money?

8 A. Correct.

9 Q. And when you discussed yesterday the issue of  
10 spread, the -- putting in terms of -- of the use of  
11 spread the way you described it yesterday, when Dey  
12 launched its Albuterol product, it cost less, so,  
13 therefore, it had a better spread from the perspective  
14 of the provider, right?

15 MR. AZORSKY: Objection to form.  
16 Mischaracterizes prior testimony.

17 A. The provider's acquisition cost, the  
18 difference between the provider's acquisition cost and  
19 the provider's reimbursement fee was bigger.

20 Q. (BY MR. ESCOBAR) And from your standpoint  
21 that gave -- from your standpoint at Dey, the various  
22 people working on launching the Albuterol, that gave  
23 Dey a competitive market advantage in the marketplace  
24 because the providers would be attracted to dispensing  
25 Dey rather than the more expensive brand.

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1 money, Dey made profits, and the providers made  
2 profits, right?

3 MR. AZORSKY: Objection, form.

4 MS. MILLER: Objection to form.

5 A. That's correct.

6 Q. (BY MR. ESCOBAR) Now, there was -- as far as  
7 you were concerned when you were working on this at  
8 Dey, there was absolutely nothing wrong with this, was  
9 there?

10 A. No, there was nothing wrong with this.

11 Q. In fact, it was -- this is exactly what the  
12 American system of the marketplace is set up to do,  
13 right?

14 MR. AZORSKY: Objection to form.

15 MS. MILLER: Objection to form.

16 A. Well, the capitalist system encourages profit  
17 making, yeah.

18 Q. (BY MR. ESCOBAR) And the fact that Dey would  
19 make profits, that would enable Dey to keep  
20 manufacturing an Albuterol product that as far as you  
21 were concerned was better for patients and better for  
22 the reimbursing entities and better for the providers,  
23 right?

24 MR. AZORSKY: Objection to form.

25 MS. MILLER: Objection to form.

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1 A. Correct.

2 Q. And that was part of your plan, wasn't it?

3 A. That was -- that was part of the plan, yes.

4 Q. And the more that providers did exactly that,  
5 that is, the more that they bought Albuterol and  
6 signed contracts with Dey to buy Albuterol, the more  
7 that the government would save money since they were  
8 reimbursing on Dey less than they had been on the  
9 brand, correct?

10 MR. AZORSKY: Objection to form.

11 MS. MILLER: Objection to form.

12 A. It seems logical.

13 Q. (BY MR. ESCOBAR) So would you agree with me  
14 then that when Dey launched its Albuterol, it helped  
15 both the government and the providers?

16 MR. AZORSKY: Objection to form.

17 MS. MILLER: Objection, form.

18 A. I don't know whether Dey was in the business  
19 of helping anybody. They were in the business of  
20 making profit for themselves.

21 Q. (BY MR. AZORSKY) Which was a legitimate  
22 thing.

23 A. Correct.

24 Q. Okay. So the end result of the fact that now  
25 Albuterol was in place was that the government saved

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1 A. That's correct.

2 Q. (BY MR. ESCOBAR) I'm sorry?

3 A. That's correct.

4 Q. Now, when all of you were working on the  
5 launch of the Dey Albuterol and looking at all of  
6 these things, you-all viewed this as a positive aspect  
7 of what you were doing, right?

8 A. That's correct.

9 Q. And there was -- you didn't view this as  
10 being in any way illegal or improper, did you?

11 A. No, I didn't think about it that way at all.

12 Q. And nobody told you that that was illegal,  
13 did they?

14 A. Nobody did, no.

15 Q. Let me direct your attention, if you would,  
16 to Exhibit 9 in that book. Exhibit --

17 A. I see it.

18 Q. What's been marked as Marrs Exhibit 9. The  
19 first page is a memo from Robert Mozak to Pam Marrs,  
20 Charles Rice, Jean-Pierre Ternier regarding Albuterol  
21 pricing strategy. Do you see that?

22 A. That's correct.

23 Q. And I -- I think one of the lawyers for  
24 Florida showed you this yesterday. Do you recall  
25 generally seeing this?



<p style="text-align: right;">Page 318</p> <p>1 second page, you see that there is a document that  2 consists of six pages Bates numbered DL-Texas 0090891  3 through 897?  4 A. Yes, I see that.  5 Q. And those pages of the exhibit -- the first  6 page is entitled "Dey Laboratories, Inc. A Report on  7 the Medicaid Program" dated March 26th, 1991, right?  8 Do you see that?  9 A. That's right.  10 Q. Now, if you turn to Page 2 where you have a  11 section -- that's a report that you prepared?  12 A. It appears so, yes.  13 Q. If you look at Page 2 on the point -- 2.2,  14 "Medicaid Reimbursement."  15 A. I see that.  16 Q. Can you just read the first sentence and  17 those two bullet points?  18 A. "Under the Medicaid program, reimbursement  19 rates must be set at a level high enough to:  20 "insure high quality care on a  21 state-wide basis" in brackets "to attract a large  22 number of providers" closed brackets and second  23 bullet, "provide payment in full for services  24 rendered."  25 Q. And that reflected your understanding on that</p>	<p style="text-align: right;">Page 320</p> <p>1 Q. And then at some point you understood that  2 some states went away from using the AWP as the  3 benchmark for reimbursement and were using WAC,  4 correct?  5 A. That's right.  6 Q. And all of those decisions were made, as far  7 as you understood, by the states and Dey had no say in  8 that, correct?  9 A. That's correct.  10 Q. And in fact, if a state decided to reimburse  11 on some other system, you had no control over that,  12 did you?  13 A. No.  14 MR. AZORSKY: Objection, lack of  15 foundation.  16 MS. MILLER: Objection.  17 Q. (BY MR. ESCOBAR) Go ahead.  18 A. No, Dey had no control over that.  19 Q. And if -- if a state, for example, decided  20 that they would reimburse on whatever the provider  21 actually paid for the -- for the pharmaceutical  22 product, you had no control over that, did you?  23 MR. AZORSKY: Objection to form.  24 MS. MILLER: Form.  25 A. No, we had no control over that.</p>
<p style="text-align: right;">Page 319</p> <p>1 point, right, at that point in time?  2 A. That's right.  3 Q. And was it your understanding that that  4 objective that you just read, that that was at least  5 in part accomplished by the reimbursement mechanism  6 that existed in the states using AWP?  7 A. That's right.  8 Q. As far as you knew, Dey didn't tell any of  9 the states how to reimburse, did they?  10 A. No, they didn't.  11 Q. The -- the decision on how a state would  12 reimburse providers on Medicaid were decisions that  13 were made at the various states, right?  14 A. That's right.  15 Q. And they -- as you looked at the information  16 that came across your desk regarding reimbursement  17 mechanisms, you saw that states used different  18 formulas, right?  19 A. That's right.  20 Q. Over time some of them had AWP minus an  21 amount, right?  22 A. That's right.  23 Q. And some of the states had larger deductions  24 from the AWP than other states, right?  25 A. Might have been, yeah.</p>	<p style="text-align: right;">Page 321</p> <p>1 Q. (BY MR. ESCOBAR) Reimbursement by Medicaid  2 though was something that you had to be aware of in  3 order to run the business in a way that made sense to  4 you, right?  5 MR. AZORSKY: Objection to form.  6 A. It was something that we considered as part  7 of our -- the way we did business, yes.  8 Q. (BY MR. ESCOBAR) And as a logical matter,  9 you would expect that a pharmaceutical company  10 couldn't really run its business without being aware  11 of how Medicaid reimbursed on some basis, right?  12 A. No. It was something that was essential to  13 running your business.  14 Q. And -- and the rules of how the Medicaid  15 program worked on reimbursement were set by the  16 government. It wasn't set by Dey, right?  17 A. That's correct.  18 MR. AZORSKY: Objection, form.  19 Q. (BY MR. ESCOBAR) Let me direct your  20 attention to -- in the same document to Page 4 under  21 Item 5. And again, we're looking at what's been  22 previously marked as Marrs Exhibit 35. And there is a  23 section there entitled "Recent Developments in the  24 Medicaid Program." Do you see that?  25 A. I see that.</p>



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1 generic manufacturers, once you launch -- when you are  
2 the first entrant -- generic entrant into the market  
3 and you're competing with the brands, you also  
4 anticipate, don't you, that at some point other  
5 generic competitors may emerge?

6 MR. AZORSKY: Objection to form.

7 MS. MILLER: Objection, form.

8 A. That was always one of the anticipations that  
9 Dey had.

10 Q. (BY MR. ESCOBAR) And in connection with the  
11 products that we've been discussing, for example,  
12 Albuterol and cromolyn, that did, in fact, happen,  
13 correct?

14 A. That's correct.

15 Q. And over a period of time after the launch  
16 other companies launched generic competitors to Dey's  
17 Albuterol, right?

18 MR. AZORSKY: Objection to form.

19 A. That's right.

20 Q. (BY MR. ESCOBAR) And other companies also  
21 launched generic competitors to cromolyn.

22 MR. AZORSKY: Objection, form.

23 A. I think so. It's not really clear right now  
24 to me whether there were immediate competitors to  
25 cromolyn.

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1 Q. (BY MR. ESCOBAR) And once competitors came  
2 in, did that have an effect on the pricing to your  
3 customers?

4 A. It normally would affect the pricing, yes.

5 Q. And what was your understanding as to how it  
6 would affect the pricing when you got new competitors?

7 A. Well, if a new competitor came along and  
8 reduced their pricing in order to entice the customers  
9 to buy their product, then Dey would have to lower  
10 their price to remain competitive.

11 Q. So over time would the presence of additional  
12 competitors prices of Dey's products would go  
13 downright?

14 A. They would erode and go down, yes.

15 Q. And that was kind of a natural sequence of  
16 events in the generic area?

17 MR. AZORSKY: Objection to form.

18 A. That was a natural sequence of events, yes.

19 Q. (BY MR. ESCOBAR) And that is different than  
20 the way things work in the brand world, right?

21 MR. AZORSKY: Objection to form.

22 A. To my -- to my understanding that is  
23 different to the way it works in the branded world --  
24 world.

25 Q. (BY MR. ESCOBAR) So based on your

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1 understanding is it your sense that over time as Dey's  
2 products were in the marketplace and generic  
3 competitors came in, Dey's profit margin on that  
4 declined?

5 MR. AZORSKY: Objection to form.

6 A. That's correct.

7 Q. (BY MR. ESCOBAR) So, for example, Albuterol,  
8 the profit margin that Dey would make would erode over  
9 the years after the launch as competitors came in,  
10 right?

11 A. That's --

12 MR. AZORSKY: Objection to form.

13 MS. MILLER: Objection to form.

14 A. That's correct.

15 Q. (BY MR. ESCOBAR) Over time when you were  
16 involved in preparing the color pricing sheets, is one  
17 of the reasons that you had to prepare new sheets  
18 because in fact you were putting in new lower prices?

19 MR. AZORSKY: Objection to form.

20 A. That was one of the reasons why we would  
21 revise price sheets, yes.

22 Q. (BY MR. ESCOBAR) All right. Now, let me  
23 turn to -- there was some questioning I think  
24 yesterday about the information that came to the  
25 attention of people at Dey, including yourself,

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1 concerning the spread on products for Warrick and Dey  
2 in Florida. Do you recall generally that subject  
3 matter?

4 A. Yes, I do.

5 Q. Let me show you what was marked yesterday as  
6 Exhibit 45. And Exhibit 45 was the Carrie Jackson  
7 memo, right?

8 MR. AZORSKY: Objection, form.

9 A. That's correct.

10 MR. ESCOBAR: When you marked this  
11 yesterday did you have any attachments to it?

12 MR. AZORSKY: No. It was one-page --

13 MR. ESCOBAR: Oh, okay.

14 MR. AZORSKY: -- document.

15 Q. (BY MR. ESCOBAR) Let's go through that first  
16 page. It's the memo from Ms. Jackson to Mari Carrell,  
17 Alberto Hoyo and Ross Uhl with a copy to you and  
18 Mr. Mozak, right?

19 MR. AZORSKY: Objection to form.

20 A. That's right.

21 Q. (BY MR. ESCOBAR) Now, this is dated August  
22 12th, 1994, right?

23 A. That's correct.

24 Q. And Ms. Jackson was reporting to the  
25 recipients of her memo about a conversation she -- she

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1 A. I would imagine so.

2 Q. And if a state wanted to save money on  
3 reimbursement, they could reimburse on the lower WAC  
4 rather than on a higher AWP, right?

5 MR. AZORSKY: Objection to form.

6 MS. MILLER: Objection to form.

7 A. Well, there was a different formula that was  
8 applied to AWP and to WAC and a state could decide  
9 which price they were going to choose.

10 Q. (BY MR. ESCOBAR) And if they chose WAC, they  
11 were generally reimbursed at a low number for the Dey  
12 products, right?

13 MR. AZORSKY: Objection, form.

14 A. I don't know. It depends entirely on the  
15 formula that was applied to the WAC and to the AWP.

16 Q. (BY MR. ESCOBAR) And -- and you don't know  
17 how they arrived at those formulas, right?

18 A. I have no idea.

19 Q. Okay. Now, the -- there came a point in time  
20 when -- about -- some months after Ms. Jackson's memo  
21 where you sent out your memo regarding Albuterol WAC  
22 pricing, right? Exhibit 46; isn't that right?

23 A. No. I sent off my memo on May 30th, '95.

24 Q. And Ms. Jackson's memo reporting on her  
25 conversation with Jerry Wells of the Florida Medicaid

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1 Q. And the reason you sent it out is because

2 based on your knowledge you weren't doing anything  
3 wrong at all, right?

4 MR. AZORSKY: Objection to form.

5 A. Correct.

6 Q. (BY MR. ESCOBAR) Now, when you sent this out  
7 to the sales and marketing people, part of your  
8 objective was so that they would know what Dey was  
9 doing with respect to the Albuterol WAC pricing,  
10 right?

11 A. So that they would know that and so that they  
12 could then go out and market the new WAC price to the  
13 customers, yes.

14 Q. And -- now, you wrote there -- under the list  
15 of states you wrote -- why don't you read that  
16 sentence there.

17 A. "As you know, the following states are  
18 now" --

19 Q. I'm sorry. The one after the states.

20 A. "WAC is not representative of our published  
21 wholesale list prices, but like AWP, is used for  
22 calculation of reimbursement. Our updated WAC values  
23 are in line with the Warrick WAC values provided by  
24 First DataBank and should level the playing field for  
25 Medicaid reimbursement.

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1 office was in August of '94, right?

2 A. That's correct.

3 Q. And in that span of time, from August '94 to  
4 May of '95, you were looking at other -- and people at  
5 Dey were looking at other ways to deal with this issue  
6 of the difference in the spread between Warrick and  
7 Dey?

8 A. That's correct.

9 Q. Now, when you sent your memo out on May 30th,  
10 1995, you put your name there, Helen, right?

11 A. That's right.

12 Q. And as you were sitting there sending this  
13 out and writing your name Helen on it, you didn't  
14 think that you were doing anything wrong, did you?

15 MR. AZORSKY: Objection to form.

16 MS. MILLER: Objection, form.

17 A. No, I didn't think I was doing anything  
18 wrong.

19 Q. (BY MR. ESCOBAR) You wouldn't have done it  
20 if you thought it was wrong, right?

21 A. That's correct.

22 Q. You wouldn't have done it if you thought that  
23 there was something illegal or fraudulent or improper  
24 about this, correct?

25 A. Correct.

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1 Q. Now, the other thing that you did with

2 respect to this matter was to send your memo to the  
3 databases, including the one to Beth Raider that you  
4 sent out on May 30th, 1995, right?

5 A. That's right.

6 Q. And subsequently it was your understanding  
7 that the databases updated their WAC prices for the  
8 Dey products indicated to the new higher numbers?

9 A. That's the assumption I would make that once  
10 I notified them by fax that the prices would be  
11 adjusted.

12 Q. So part of what you were doing here, your  
13 intention was to notify everybody who had an interest  
14 in this through the databases that Dey actually had a  
15 new WAC price that was higher than what it had before,  
16 right?

17 A. That's --

18 MR. AZORSKY: Objection to form.

19 A. That's correct.

20 Q. (BY MR. ESCOBAR) You didn't -- you didn't  
21 keep the fact that there was a new higher WAC price  
22 secret, did you?

23 A. No, we didn't.

24 Q. In fact, you published it to -- in the  
25 publications that you knew the states would see,

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1 reference, that was what you had -- what you had done  
2 in your updating memorandum that you had sent out to  
3 the sales force, correct?

4 A. I would imagine that is a result of the  
5 memorandum in May of '95, yes.

6 Q. To your knowledge, did you or anybody from  
7 Dey ever hear from Mr. Wells asking questions about  
8 this updating?

9 A. I never heard from him and as far as I'm  
10 aware, nobody else heard from him about it.

11 Q. Did -- did any of the people from the  
12 attorney general's office in Florida who you've met  
13 with, you know, recently did any of them show you any  
14 of the documents indicating these visits, the visit in  
15 Florida and the discussion about the updating with  
16 Mr. Wells?

17 MR. AZORSKY: Objection to form.

18 MS. MILLER: Object to form.

19 A. I have not seen them until today.

20 Q. (BY MR. ESCOBAR) Not until I've shown them  
21 to you now, right?

22 A. That's right.

23 MR. ESCOBAR: Let me just -- the -- I  
24 think when we copied this the Bates number of Exhibit  
25 53 did not print out, so it's Dey-Florida 0039599.

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1 Q. (BY MR. ESCOBAR) Now, you testified about  
2 the spread in conversations in response to questions  
3 yesterday from counsel. The money that constituted  
4 the spread, who got that money?

5 A. Well, that money was -- came to the provider  
6 of the dispensed medication.

7 Q. And the provider would be a pharmacy or  
8 whoever dispensed the medication, right?

9 A. Correct.

10 Q. And Dey never got any of the spread, did it?

11 A. No, it didn't.

12 Q. It was your understanding, though, when you  
13 were at -- the whole period that you were at Dey, it  
14 was your understanding that for providers the subject  
15 of a spread was a significant and important issue; is  
16 that right?

17 A. That's right. The spread was very important  
18 to the providers of our medications to the public.

19 Q. And did you get that understanding because  
20 information came back to Dey from its sales force?

21 A. That's one of the ways in which I got that  
22 impression, yes.

23 Q. And was it your impression that customers  
24 discussed the issue of the spread and raised the issue  
25 of the spread with Dey salespeople?

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1 A. I don't know who raised the topic, but I  
2 certainly know that that was a topic of discussion  
3 between salespeople and providers.

4 Q. If you'd turn in your binder to Marrs Exhibit  
5 37. You have that in front of you?

6 A. I have that in front of me.

7 Q. And this is a document that counsel went  
8 through with you yesterday relating to the various  
9 approvals for what's referred to here as Part Number  
10 0933800, which is a comparison worksheet; is that  
11 right?

12 A. That's right.

13 Q. Now, when you signed -- you signed your name  
14 here on April 5th, 1995 to this particular approval  
15 form, correct?

16 A. That's right.

17 Q. And that indicated that in your function as  
18 the marketing manager you were approving this  
19 comparison worksheet, right?

20 A. That's correct.

21 Q. And the comparison worksheet would be a  
22 worksheet that people could use to compare the spread  
23 on two different products; is that right?

24 A. That's correct.

25 Q. And when you approved that, you didn't think

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1 you were doing anything wrong, did you?

2 A. No, I didn't.

3 Q. You wouldn't have signed your name if you had  
4 thought it was wrong, right?

5 A. That's correct.

6 Q. And you didn't think that salespeople  
7 comparing the spread, that there was anything wrong  
8 with that, did you?

9 A. No. That was what -- part of what we did.

10 Q. And when you approved this form -- well, let  
11 me -- let ask you this: The signature was the date --  
12 you put the signature -- your signature on April 5th,  
13 '95, right?

14 A. That's right.

15 Q. You actually never saw anybody use the  
16 worksheet, did you?

17 A. In practice, in front of a customer?

18 Q. Yes.

19 A. I never saw anybody use it, no.

20 Q. And this particular worksheet that was  
21 approved related to one of Dey's products, right?

22 A. That's right.

23 Q. And you don't know whether there was a  
24 similar worksheet created and approved in this method  
25 for any other product, do you?



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1 MR. AZORSKY: Objection, form.  
 2 A. I'm not sure.  
 3 Q. (BY MR. ESCOBAR) Let me turn your attention  
 4 to what was marked earlier as Exhibit 42. And Exhibit  
 5 42 is one of the documents that counsel for Florida  
 6 talked to you about, right?  
 7 A. That's right.  
 8 Q. And if I recall correctly from your testimony  
 9 this morning, this was the -- you determined last  
 10 night at home by looking at a document that it's your  
 11 recollection that this Exhibit 42 was part of a  
 12 presentation at a 1995 marketing meeting?  
 13 A. That's correct. I looked at a photograph  
 14 which determined that this was the logo that was used  
 15 at the 1995 national sales meeting in Arizona.  
 16 Q. And -- now, this exhibit also has attached to  
 17 it a worksheet, a couple of worksheets, right?  
 18 A. That's right.  
 19 Q. And when you -- when you were at this sales  
 20 meeting and the worksheet was being discussed, as you  
 21 indicated in your testimony, you didn't think that  
 22 there was anything wrong with that, did you?  
 23 A. No, I didn't.  
 24 MR. AZORSKY: Objection to form.  
 25 Q. (BY MR. ESCOBAR) And if you didn't think

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1 that people should be discussing the worksheet or  
 2 comparison of spreads at the meeting, you would have  
 3 said so, right?  
 4 MR. AZORSKY: Objection to form.  
 5 A. I probably would have said something, yeah.  
 6 Q. (BY MR. ESCOBAR) And with respect to the  
 7 worksheet that is attached to Exhibit 42, did you ever  
 8 see anybody actually use one of those worksheets?  
 9 MR. AZORSKY: Object to the form.  
 10 MS. MILLER: Objection, asked and  
 11 answered, wasn't it?  
 12 MR. ESCOBAR: No. I was asking about  
 13 the prior worksheet.  
 14 MR. AZORSKY: Objection, form.  
 15 A. I saw -- I think at this sales meeting when  
 16 Debi and Ross were presenting this, somebody actually  
 17 filled out the prices. They worked through this price  
 18 sheet as they were going along and explaining to the  
 19 sales force how to fill this out and they were filling  
 20 it in on -- with soft-tip pen on an overhead and  
 21 that's the only time I saw somebody actually  
 22 completing one of these forms was at the national  
 23 sales meeting as part of an educational tool for the  
 24 sales force.  
 25 Q. (BY MR. ESCOBAR) And you never saw a

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1 salesperson use it with a customer?  
 2 MR. AZORSKY: Objection, form.  
 3 A. I did not see a salesperson use it with a  
 4 customer, no.  
 5 Q. (BY MR. ESCOBAR) Did you ever go on any  
 6 sales call your -- calls yourself?  
 7 A. Yes, I did.  
 8 Q. With who?  
 9 A. I went with -- let me think. I went with  
 10 Ross Uhl. The guy in Texas, Jim Gist, I was in a  
 11 sales call with him once. I went with Debi Codute,  
 12 Michelle Ashby. That's about all I can recall off the  
 13 top of my head.  
 14 Q. On any of those sales calls were there  
 15 discussions about spread?  
 16 A. There certainly were discussions about  
 17 spread, especially with Ross Uhl in Florida.  
 18 Q. And with a custom -- that is, with a  
 19 customer?  
 20 A. With a customer, yes.  
 21 Q. And did the customer in Florida indicate to  
 22 you why spread was important at the meeting you  
 23 attended?  
 24 A. No, not that I recall.  
 25 Q. The meeting in Florida, do you recall who the

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1 customer was?  
 2 A. I have no idea, no.  
 3 Q. Do you recall what kind of --  
 4 A. It was a home healthcare pharmacy.  
 5 Q. And it was you and Mr. Uhl?  
 6 A. That's correct.  
 7 Q. And then one or more people from the  
 8 customer?  
 9 A. There was one or more people, maybe one or  
 10 two people.  
 11 Q. And let me ask you this: Would -- that  
 12 meeting, can you place it in time?  
 13 A. That was fairly close to the beginning of the  
 14 launch of the Albuterol product because we went into  
 15 the back of the facility and they still had their old  
 16 filling machines there that they were using to fill  
 17 their little unit-dose bottles that they self-  
 18 compounded in the back and I was shocked to see that  
 19 the machinery was still up and plugged in and standing  
 20 there.  
 21 Q. This was in -- so this would have been in  
 22 '92?  
 23 A. Yeah, probably -- yeah, late '92, maybe early  
 24 '93, somewhere around there.  
 25 Q. So it was after the launch?

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1 price than Dey on its unit-dose product?  
 2 MR. AZORSKY: Objection to form.  
 3 A. I have no idea.  
 4 Q. (BY MR. McDONALD) When you left Dey in  
 5 August of 1995, had you ever dealt with MACs in  
 6 conjunction with pharmaceutical reimbursement?  
 7 MR. AZORSKY: Objection to form.  
 8 A. I don't know what MACs means.  
 9 Q. (BY MR. McDONALD) Maximum -- maximum  
 10 allowable cost. Have you ever heard that?  
 11 A. No.  
 12 Q. You did testify that you had heard or people  
 13 comment that AWP meant "ain't what's paid."  
 14 A. That's right.  
 15 Q. Do you think that that was common knowledge  
 16 in the industry, that AWP was "ain't what's paid"?  
 17 MR. AZORSKY: Objection to form.  
 18 A. I don't know. I've never heard of it  
 19 anywhere either mentioned or spoken to at -- referred  
 20 to like that other than by the Dey sales force.  
 21 Q. (BY MR. McDONALD) Well, did you think it was  
 22 some secret that AWP wasn't an actual price?  
 23 A. I didn't think it was a secret within Dey,  
 24 no.  
 25 Q. Do you think it was a secret within the

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1 pharmaceutical industry that AWP wasn't an actual  
 2 price?  
 3 MR. AZORSKY: Objection to form.  
 4 MS. MILLER: Objection to form.  
 5 A. I have no idea.  
 6 Q. (BY MR. McDONALD) Well, look back on Exhibit  
 7 26. It's in the book here (indicating). This is a  
 8 memo that was done by Mr. Mozak in October of 1993,  
 9 correct?  
 10 A. That's correct.  
 11 Q. And if you'll look on the second page. There  
 12 is an analysis done here of reimbursement, correct?  
 13 A. Correct.  
 14 Q. And at the bottom section of the page it  
 15 shows reimbursement at 80 percent of AWP. Do you see  
 16 that?  
 17 A. Yes, I see that.  
 18 Q. And that's AWP minus 20 percent, correct?  
 19 A. That's right.  
 20 Q. Do you know why in October of 1993 Dey's  
 21 analysis of reimbursement was AWP minus 20 percent?  
 22 A. I have no idea why Mr. Mozak used that  
 23 formula.  
 24 Q. Does it surprise you that that was the  
 25 analysis being done by Dey in 1993, that is, AWP minus

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1 20 percent?  
 2 MR. AZORSKY: Objection to form.  
 3 MS. MILLER: Objection to form.  
 4 A. I have no comment about that or any judgment  
 5 about it. It was what he used and, you know.  
 6 Q. (BY MR. McDONALD) Doesn't surprise you to  
 7 see that though, does it?  
 8 MR. AZORSKY: Objection to form.  
 9 A. No, it doesn't surprise me to see that.  
 10 MR. AZORSKY: I want to note that it's  
 11 5:30.  
 12 MR. McDONALD: As long as she's okay.  
 13 I'm going to try --  
 14 THE WITNESS: No. We can go for another  
 15 10 minutes.  
 16 MR. McDONALD: I'm going to try to get  
 17 done.  
 18 Q. (BY MR. McDONALD) If you look at Exhibit 46,  
 19 please. That's one of the ones that was marked today.  
 20 A. Okay.  
 21 Q. Or yesterday.  
 22 A. Oh, the famous one.  
 23 THE REPORTER: They're in order.  
 24 THE WITNESS: They're in order?  
 25 MR. McDONALD: They were. Maybe --

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1 THE WITNESS: They were in order.  
 2 THE REPORTER: I put them at the last  
 3 break again.  
 4 THE WITNESS: You did? That's nice of  
 5 you. Okay.  
 6 A. There it is. Okay. I got it.  
 7 Q. (BY MR. McDONALD) You testified earlier that  
 8 you never looked at First DataBank to see what prices  
 9 it had reported; is that correct?  
 10 A. I never actually got a copy of the price  
 11 lists that they published and never looked in those  
 12 price lists to see what they had, no.  
 13 Q. Okay. I want to focus your attention on the  
 14 third paragraph of this -- of the first page in the  
 15 second sentence that begins "Our updated WAC values."  
 16 Do you see where I'm looking?  
 17 A. Uh-huh.  
 18 Q. "Our updated WAC values are in line with the  
 19 Warrick WAC values provided by First Data Bank." Do  
 20 you see that?  
 21 A. Uh-huh.  
 22 Q. Yes?  
 23 A. Yes, I see that.  
 24 Q. Since you don't -- you've never looked at  
 25 First DataBank, you don't know if that's a true